

Message

From: Dunn, Alexandra [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=426D0177EAAB4001A5C85F051565997E-DUNN, ALEXA]
Sent: 4/19/2019 4:24:42 PM
To: Schwab, Justin [Schwab.Justin@epa.gov]
CC: Jackson, Ryan [jackson.ryan@epa.gov]; Molina, Michael [molina.michael@epa.gov]; Leopold, Matt (OGC) [Leopold.Matt@epa.gov]; Fotouhi, David [Fotouhi.David@epa.gov]; Lis-Coghlan, Kamila [lis-coghlan.kamila@epa.gov]
Subject: Re: Chlorpyrifos Ninth Circuit decision (LULAC)

Thank you for this notice. We are well prepared to brief Matt Tuesday on science issues and to move forward on our next steps.

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Office of Chemical Safety & Pollution Prevention
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Sent from my iPhone

On Apr 19, 2019, at 11:20 AM, Schwab, Justin <Schwab.Justin@epa.gov> wrote:

Today the *en banc* Ninth Circuit issued an order in the *LULAC* (League of United Latin American Citizens) case regarding chlorpyrifos. **The court has ordered us to issue a final decision on LULAC's administrative objections to our March 2017 petition denial, and to do so within 90 days (July 18, by our calculations). OSCPP and OGC will soon come to the Administrator with options to select from.**

As you know, in March 2017 we denied a petition that requested us to revoke pesticide food-residue tolerances for chlorpyrifos. A panel of the Ninth Circuit ruled in August 2018 that the court had jurisdiction already and that it didn't need to wait before we ruled on administrative objections to that denial, and that panel ordered us to revoke tolerances (and cancel registrations) within 60 days.

We petitioned the court to rehear the case *en banc*, they granted rehearing, and the case was argued before an *en banc* panel of judges at the end of March. Today the court held that it was converting the case to *mandamus* proceedings and, under its mandamus jurisdiction, granting mandamus relief and ordering us "to issue, no later than 90 days after the filing of this order, a full and final decision on LULAC's objections pursuant to [408(g) of the FFDCA]." The court did not decide any other question (i.e., didn't decide whether the panel was right that the court already had jurisdiction.